

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

OREGON NATURAL DESERT ASS'N,

Plaintiff,

3:09-cv-00369-PK
OPINION AND ORDER

KENNY MCDANIEL, Burn District
Manager, BLM, *et al.*,

Defendants.

PAPAK, Judge:

Plaintiff Oregon Natural Desert Association ("ONDA") brought this action arising from the travel management planning process for the Steens Mountain. ONDA alleged that either BLM's decision adopting its Travel Management Plan ("TMP") or the Interior Board of Land Appeals' ("IBLA") decision approving BLM's adoption of the TMP violates the Steens Mountain Cooperative Management and Protection Act of 2000 ("Steens Act"), 16 U.S.C. § 460nnn *et seq.*, the Federal Land Policy and Management Act of 1976 ("FLPMA"), 43 U.S.C. §§

1701–87, the Wilderness Act of 1964, 16 U.S.C. §§ 1131–36, and the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321–61.

On July 8, 2011, this court granted reconsideration and altered its previous April 2011 opinion and order, clarifying that it remanded this action for further proceedings before the Department of Interior without vacating the IBLA merits decision or BLM's underlying TMP or environmental analysis. (#118.) The court's July 8th opinion also determined that a preliminary or temporary injunction was justified prohibiting mechanical route maintenance on routes that ONDA alleged were non-existent or obscure, pending a new decision by the IBLA. *Id.* The court gave the parties two weeks to confer and present either a joint proposal detailing the precise contours of this injunction, or separate proposals. *Id.* In the interim, the court ordered BLM to refrain from planned maintenance on Level 2 routes.

On July 18, 2011, ONDA moved for a three-week extension of time in which to confer and submit the joint proposal requested by the court, noting that both its lead counsel and mapping expert were unavailable. (#120.) While ONDA agreed to permit BLM to proceed with much of BLM's planned Level 2 maintenance during these additional three weeks, it objected to maintenance on portions of three routes, including parts of Smyth Ranch Road, Ward Place/McLean Road, and Bone Creek Road. *Id.* BLM, however, responded that maintenance on those segments during the summer maintenance season was necessary for a variety of reasons, including to facilitate the Five Creeks Rangeland Restoration Project, enable the potential entry of firefighting personnel, and ensure reasonable access for private property owners and grazing permittees. (#123.) BLM also argued that ONDA had not previously contested the legality of motorized travel or maintenance of those routes in this action. *Id.* Consequently, BLM agreed to

acquiesce to the three week extension so long as the court permitted BLM to perform its planned spot maintenance on those specific routes. *Id.*

On July 22, 2011, this court held a telephone conference with the parties to discuss the requested extension. The court orally granted ONDA's motion for an extension of time, but declined to rule on BLM's request to carry out its planned maintenance on the three routes notwithstanding this court's previous order prohibiting such maintenance until the parties conferred and submitted a proposed injunction. Now before the court is ONDA's motion for extension of time (#120) and BLM's request for partial relief from this court's injunction against planned maintenance pending conferral and submission of a proposed temporary injunction (#123).

//

//

//

//

//

//

//

//

//


//

//

//

As described in the telephone conference, the parties now have until August 12, 2011 to confer and submit a joint proposed injunction, or failing agreement, separate proposals. Further, according to ONDA's concession, BLM may conduct maintenance on routes identified as "OK to Maintain" and depicted in dark green and blue on maps submitted by BLM. (Hazen Decl., #124, Exs. A, B.) Finally, pending further order of this court, BLM may also engage in the planned maintenance of the portions of Smyth Ranch Road, Ward Place/McLean Road, and Bone Creek Road depicted in red on BLM's maps. *Id.* As indicated by BLM's declarations, BLM's maintenance activities may not include blading a continuous path and must be limited to maintaining locations along those routes necessary to ensure effective transportation and prevent safety risks.

Dated this 28th day of July, 2011.



Honorable Paul Papak
United States Magistrate Judge